United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

76-4022

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4022

SHAHEEN REHMAN,

Petitioner,

v.

IMMIGRATION AND
NATURALIZATION SERVICE,

Respondent.

PETITION FOR REVIEW OF DEPORTATION ORDER

BRIEF FOR PETITIONER

†

Apperdix

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Statement of Issue Presented For Review

Whether the Board of Immigration Appeals erred in its ruling that petitioner's guilty plea to the charge of possession of a controlled substance under Section 220.03 of the New York State Penal Law and the subsequent sentencing of petitioner to a conditional discharge accompanied by the issuance of a Certificate of Relief from Disabilities pursuant to Section 701 of the New York Correction Law constituted the basis of mandatory deportation pursuant to Section 241(a)(11) of the Immigration and Nationality Act. (Title 8 U.S.C. Section 1251(a)(11)).

Statement of the Case

This is a proceeding to review a decision of the Board of Immigration Appeals dismissing petitioner's appeal from a decision of an Immigration Judge dated March 11, 1975 finding petitioner deportable under Section 241(a)(11) of the Immigration and Nationality Act. The decision of the Board of Immigration Appeals rendered on November 17, 1975 is reported as Matter of Shaheen Rehman. This case has not previously been before this Court.

Statement of Facts

Mr. Rehman, who was 22 years of age at the time of his arrest, originally came to this country at age 16 from Pakistan as a foreign exchange student. After a year in high school in Albany he studied at the State University of New York at Albany and was awarded a Bachelor's Degree. He then transferred to Syracuse University where he has been studying to receive a Master's Degree in Public Administration. Letters of reference were introduced without objection in the record before the Immigration Judge and for the purposes of this proceeding it is uncontested that Mr. Rehman, prior to the incident which gave rise to his arrest, had compiled an excellent record not only academically but has demonstrated his concern for the well-being of other members of the student body (App. 3a). Perhaps Mr. Rehman's character can be summarized in the letter signed by Mrs. Virginia T. Torelli, Foreign Student Advisor at Syracuse Uni-

versi when she says "we find this student to be cooperative, perso le, sensitive to others, and possesses a selfless dedication o contributing to the improvement of man's well-being." While Syracuse University Mr. Rehman was appointed a resident advi and the decision of appointment was made on character refe ces which were received by both the administration and student selection boards (App. 1a - 3a). It is Mr. Rehman's intention to continue his studies in the United States and obtain a Ph d.in Public Administration (App. 3a).

Mr. Rehman's difficulties occurred in the course of a trip he made to visit his family in Pakistan in the winter of 1973. Upon returning to this country he was arrested for possession of hashhish or marijuana on January 18, 1974. He was charged under Section 220.03 of the New York Penal Law with possession of a controlled substance. Thereafter on March 29, 1974 he pleaded guilty in the New York City Criminal Court, County of Queens to a violation of Section 220.03 which states in part:

> "A person is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance."

On March 29, 1974, the same day he pleaded guilty, Mr. Rehman was sentenced to a conditional discharge by the trial judge, the Hon. Abraham Roth. On that same day Judge Roth granted Mr. Rehman a Certificate of Relief from Disabilities pursuant to Section 701 of the New York Correction Law (App. 4a). The Certificate became final on March 29, 1975. Section 701 provides that a Certificate of Relief from Disabilities

may be granted to relieve an eligible offender of any forfeiture or disability or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. The one exception to the relief granted under Section 701 is that the offender may not seek public office.

POINT I

THE STATE LAW AND JUDICIAL RECORDS PERTAINING TO THE NEW YORK CRIMINAL PROCEEDINGS MUST BE READ IN THEIR ENTIRETY

A. The New York Legislature Intended to Relieve Petitioner of Forfeitures and Disabilities that would Deny him Complete Rehabilitation

Section 241(a)(11) of the Immigration and Nationality Act [8 U.S.C. Section 1251(a)(11)] states in essence that an alien shall be deported who has been convicted of illicit possession of narcotic drugs or marijuana. The inclusion of marijuana as a prohibited substance was added by Congress in 1960.

It is the position of petitioner that there was no "conviction" that would work an automatic forfeiture of his right to maintain his status as a nonresident student in the United States.

Admittedly, petitioner pleaded guilty to possession of a controlled substance under Section 220.03 of the Penal Law and on March 29, 1974 he was sentenced to a Conditional Discharge by the Hon. Abraham Roth. However, on the same day Judge Roth granted petitioner a Conditional Discharge and issued a "Certificate of Relief from Disabilities." An examination of the

rtificate indicates that Judge Roth granted maximum relief to Mr. Rehman from forfeiture, disabilities and bars to employment. The pertinent language is as follows (App. 4a):

"This certificate shall:

Relieve the holder of all forfeitures and all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence.* * *"

The Certificate is founded upon Sections 700, 701 and 702 of the New York State Correction Law. When issued on the day that sentence is handed down, it may relieve not only disabilities but forfeitures as well [Correction Law, Section 702(1)].

Section 701(2) is most pertinent to the issues on appeal. It provides that a conviction with a Certificate is not in actuality a true conviction. The language reads:

"Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege covered by the certificate."

The purpose of enacting Article 23 of the New York Correction Law in 1966 was explained in Matter of Da Grossa v. Goodman, 72 Misc. 2d 806 (Sup. Ct. N.Y. County 1972) where the Court said (807, 808):

"The Governor's memorandum filed with the bill states the following, 'The bill, recommended by my Special Committee on Criminal Offenders, authorizes the courts * * * to issue certificates to first offenders preserving or restoring the right to vote and preventing the forfeiture of other rights * * *. This bill will reduce the automatic rejection and community isolation that often accompany conviction of crimes, and will thus contribute to the complete rehabilitation of first offenders and their successful return to responsible lives in the community.

> It is an important step beyond the automatic, indirect sanctions following upon a conviction without regard to the merits of the individual involved.' (N.Y. Legis. Annual, 1966, p. 349; id. p. 18-19)."

The scope of Article 23 of the Correction Law was broadened in 1972 to substitute a category of "eligible offenders" for "first offenders."

It is the New York legislature which gave rise to the definition and impact of the crime, i. e., Section 220.03 of the Penal Law. It logically follows that the New York legislature has the inherent power to limit the effect of this same criminal statute that it promulgated. New York could have chosen as a matter of public policy not to enact any law imposing penalties for possession of marijuana. Or it could have enacted a criminal statute that required a finding of mens rea in which case deportation would clearly not be mandatory as in Lennon v. INS, 527 F. 2d 187 (2nd Cir. 1975). Instead the New York legislature determined that while possession of marijuana was a crime, it gave the trial court not only power to convict but concurrent power to issue a certificate on the day of sentencing that would (with the single exception of the right to hold public office) either: (a) relieve the offender of all forfeitures and disabilities or (b) relieve the offender of all disabilities but not forfeitures or (c) relieve the offender of designated forfeitures or disabilities. In the case of petitioner Shaheen Rehman the Trial Judge granted the broadest relief permissible (App. 4a). It is perhaps significant that the New York legislature required that in order for the Certificate to relieve the defendant of

forfeitures as well as disabilities that it had to be so stated at the time of sentencing. Correction Law, Section 702(1). It would seem that the legislature was saying that if the maximum relief were to be afforded the granting of such relief must be an integral part of the judgment and not an afterthought.

What the Immigration & Naturalization Service seeks to do here is base deportation upon a legalism created by the New York legislature, viz., the definition of a crime (Penal Law 220.02) while ignoring the legislature's companion legalism (Correction Law, section 701),which creates relief from any forfeitures or disabilities. This arbitrary selection of a statute it likes while ignoring another that it does not is no way to fairly construe the law. In expounding a statute the courts must not be guided by a part but must look to the provisions of the whole law and to its object and policy. cf. Mastro Products Corp. v. NLRB, 350 U.S. 270, 285 (1955).

B. When Determining What Is a Conviction for Deportation Purposes the Laws of New York Must be Given Recognition

The Board of Immigration Appeals said in its opinion below that the Immigration and Naturalization Service is not bound by the manner in which the State construes the effect of its own convictions. Admittedly a number of Circuit Courts have held that the definition of the word "convicted" is a matter of federal law. Aguilera - Euriguez v. Immigration & Naturalization Service, 516 F. 2d 565 (6th Cir. 1975). The rule has not been uniformly adopted. It was said in Holzapfel v. Wyrsch, 259 F. 2d 890, 891 (3rd Cir. 1958):

> "In deportation cases where a state crime is involved, we have to look to the law and procedure of the state to interpret what happened in the state courts. Pino v. Nicolis, D.C., Mass. 1954, 119 F Supp. 122, affirmed 2 Cir., 1954, 215 F. 2d 237, reversed on other grounds Pino v. Landon, 1955, 349 U.S. 901, 75 S. Ct. 576, 99 L. Ed. 1239; United States ex rel. Freislinger on Behalf of Kappel v. Smith, 7 Cir., 1930, 41 F.2d 707."

In Holzapfel, the Circuit Court in denying the deportation of a sex offender placed considerable reliance upon the intent of the New Jersey State legislature to rehabilitate such persons rather than to place them in jail.

The case of Pino v. Landon, 349 U.S. 901 (1955), reversing 215 F. 2d 237 and 119 F. Supp. 122, was cited in Holzapfel. There the District Court sitting in Massachusetts had ordered deportation under Section 241 (a) of the Immigration & Naturalization Act upon the ground that the alien had been convicted, after entering the United States, of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct. The question was, with respect to the second crime, whether he had been "convicted" under Massachusetts law where he had been found guilty, received a suspended sentence and the case placed "on file" subject to being called up at any time for imposition of sentence or other disposition. The Supreme Court, notwithstanding the fact that the alien had waived his right to appeal, ruled that there was no conviction for deportation purposes. Implicit in the decision of the Supreme Court is recognition of the principle that state standards must be applied in determining what in fact is a "conviction." A reason for respecting state criteria is found in Brea-Garcia v. INS, 531 F. 2d

693, 697 (3rd Cir 1976) where it was said with regard to the definition of adultery: "Since the impact of an alien's behavior is felt foremost in the community where he lives his behavior more appropriately should be held to the accepted standards of his state of residence rather than to the 'national standard' * * *." So also this Court found the laws of the jurisdiction where the offense occurred to be relevant when it denied deportation in Lennon v. INS, 527 F. 2d 187 (2nd Cir. 1975).

POINT II

A HARMONY OF PURPOSE CAN BE REVEALED IN COMPARING RELEVANT FEDERAL AND STATE STATUTES DEALING WITH THE REHABILITATION OF FIRST OFFENDERS

A. Congress By Enacting the Comprehensive Drug Abuse Prevention & Control Act of 1970 Indicated Its Willingness to Permit Complete Rehabilitation of First Offenders Charged With Possession of Drugs

The Board of Immigration Appeals in its opinion below (App. 8a) said that the Immigration and Naturalization Service is not bound by how the State chooses to treat the event citing Cruz-Martinez v. INS, 404 F. 2d 1198 (9th Cir. 1968), cert. den., 394 U.S. 955. There the alien was convicted in California of unlawful possession of heroin and marijuana. Five years later he obtained an order releasing him from "all penalties and disabilities resulting from the conviction." The Circuit Court said (404 F. 2d at 200) that "it would be anomalous for a federal action based on a state conviction to be controlled by how the state chooses to subsequently treat the event" (emphasis supplied to point out a variance from the language used below by the

Board of Immigration Appeals.)

The authority of Cruz-Matinez depends upon the relevance of its factual situation and even more importantly upon the current state of federal law. Regarding the facts, in the instant case the release from forfeitures and disabilities was simultaneous with the sentence. It was not a subsequent state action that altered the original event but was integrated into and shaped the original judgment. Furthermore, even the Immigration & Naturalization Service no longer follows the Cruz-Martinez decision where youthful offenders are convicted under either state or federal statutes. See Matter of Andrade, Interim Decision 2276 (BIA 1974). As for the law, Cruz-Martinez was decided before Congress eliminated mandatory sentencing with the enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The decision pre-dated the clear Congressional intent to show compassion to first offenders possessing a controlled substance indicating that as a matter of federal policy there would henceforth be a distinction drawn in drug cases between those found guilty for the first time of possessing a controlled substance and other drug law violators (21 U.S.C. section 844(b)).

The purpose of the New York State legislature in enacting Section 701 of the Correction Law in 1966 finds its parallel in the intent of Congress in 1970 in promulgating Section 844 of Title 21 of the United States Code. Both provide a procedure to benefit first offenders, although the federal statute is limited in its application to those who are found guilty of possession of a controlled substance and the state law is broader in scope.

Previous to the enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970 the federal law provided for mandatory sentencing of drug law violators. The passage of Title 21 Section 844 clearly indicated a Congressional trend toward greater leniency where first offenders are concerned. See United States v. Garcia, 476 F. 2d 286 (9th Cir. 1973); Legislative History, 1970 U. S. Congressional and Administrative News p. 4566.

Title 21 Section 844 (b) (1) provides that discharge and dismissal of a first offender guilty of possession of a controlled substance shall be without court adjudication of guilt but a non-public record thereof shall be retained by the Department of Justice solely for the purpose of use by the Courts in subsequent proceedings to aid in determining whether the defendant might again qualify for Section 844 (1)(b) treatment. We then find in the federal statute language that closely parallels that found in the New York State Correction Law:

> "*** Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person."

The New York statute talks of relief from "disabilities or forfeitures" and the federal statute refers to "disqualifications or disabilities." Despite the difference in language both legislative bodies share the expressed view that the first offender should be given a second chance. As a Court said in an analogous factual situation: "We cannot imagine a more complete deprivation of a second chance than deportation." Morera v. INS, 462 F. 2d 1030, 1032 (1 Cir. 1972).

Where a federal statute indicates a unity of purpose with state law the federal courts will give recognition to a prior state judicial determination. Cf. United States v. Hoctor, 487 F. 2d 270 (9 Cir. 1973). Federalism does not prelclude cooperative action between the two sovereigns where the interests of both state and nation are thereby served. Cf. United States ex rel. Gereau v. Henderson, 526 F. 2d 889, 894 (5th Cir. 1976). The wisdom of upholding state laws where they interrelate with federal statutes was given recognition in Richards v. U.S., 369 U. S. 1, 11 (1961) where the Court said:

> "We should not assume that Congress intended to set the courts completely adrift from state law with regard to questions for which it has not provided a specific and definite answer in an act such as the one before us which, as we have indicated, is so intimately related to state law. Thus, we conclude that a reading of the statute as a whole, with due regard to its purpose, requires application of the whole law of the State where the act or omission occurred."

More recently the Supreme Court held that despite the unquestioned rule that the federal government has the exclusive power to regulate immigration, state laws will be upheld that deal with aliens when there is no clear conflict with an expressed federal policy. De-Canas v. Bica, 44 U.S.L.W. 4235 (U. S. Feb. 24, 1976).

Kolios v. INS. 532 F. 2d 786 (1st Cir. 1976) very recently decided, would at first blush appear to favor the position taken by the Attorney General but upon careful study supports petitioner. There the alien had pleaded guilty to selling marijuana in violation of Texas law and was placed on probation. Three years later he fulfilled the conditions of probation and the conviction was set aside. By a two to one decision the First Circuit upheld

deportation on the ground that the Texas expungement did not vitiate the conviction under Immigration & Nationality Act. While the facts in Kolios are in many respects similar there are noteworthy differences. For example,the Texas law did not free the alien from all disabilities since the accused was obliged to set forth his conviction on a subsequent application for employment (532 F. 2d at 789 n. 7). No such restriction applies under the New York Correction Law. De-Paolo v. Bronstein, 45 AD 2d 691(First Dept. 1974). Furthermore in Kolios the expungement occurred three years after conviction while in the instant case the granting of relief was contemporaneous with sentencing. However, the definitive dissimilarity is the fact that Kolios was found guilty of selling marijuana while petitioner Rehman was found guilty of simple possession. Chief Judge Coffin, writing for the majority pointed out that in 1970 Congress when it ameliorated its own sanctions in drug cases took a selective approach and provided only for the possibility of expungement to cases of simple possession of a controlled substance, except where youthful offenders were involved (532 F. 2d at 790). But the Court said in a footnote:

> "11. A close question would be posed if a young offender's state conviction for simple possession had been expunged. In such a case it could be argued that he should be treated no more harshly than he would have been under 21 U.S.C. § 844."

This of course is the point that petitioner now advances on this appeal.

Judge McEntee who dissented in Kolios would have denied deportation even though the alien there was convicted of selling

marijuana. He said (532 F. 2d at 791):

> " Furthermore, I do not share the majority's concern over the possible non-uniformity which might result from giving effect to the rehabilitative purposes of state expunction laws. In this as in other areas Congress has frequently made federal laws dependent on state statutes, see, e.g., 18 U.S.C. App. §1202 (c) (2); see also 18 U.S.C. §1955(b)(1)(i). Congress has clearly bargained for and manifested an acceptance of the variety that necessarily flows from making deportation dependent on state convictions. Since Congress knew of the existence of state expunction provisions and the fact of their diversity, it could hardly have been aware that such statutes might have a different scope than comparable federal provisions."

In Lennon v. INS, this Court discussed the fact that Lennon was eligible for post-conviction relief pursuant to the British Uniform Rehabilitation of Offenders Act effective July 1, 1974. Under that statute where the offender has maintained a clean record for five years after a determination of guilt the conviction would become "spent" for certain specified purposes. (The British statute is reproduced at page 403 of petitioner's appendix in the Lennon case.) This Court commented upon the British law in a footnote to its opinion in Lennon as follows (527 F. 2d at 194):

> "14. Nor is it irrelevant that, in 1974, Parliament enacted the Rehabilitation of Offenders Act, an expunction statute which wiped out convictions for minor offenses, including Lennon's provided the convicted person had kept his record free of serious offenses for five years. It is reasonable that weight should be given to a legislative determination by the country which imposed the conviction that it is not evidence of bad character."

B. The Enactment of the"Federal Young Adult Offenders" Statute Indicates Favoring the Rehabilitation of Persons of Immature Years

Under Matter of Andrade, Interim Decision 2276 (BIA 1974), cited supra the service no longer deports aliens found guilty of possessing marijuana where their convictions have been expunged under state or federal procedures benefitting youthful offenders. In the instant case petitioner was twenty-two years old when he was arrested. Had he been arrested and tried under current federal drug laws he could have been designated a "Young Adult Offender" a category applicable to defendants with good previous records who are at least twenty-two and not yet twenty-six years of age (18 USC section 4209). As a "Young Adult Offender" charged with a crime that no longer provides for mandatory sentencing he would have been eligible for the same benefits as a youthful offender, including the setting aside of the conviction after a period of probation (18 USC sections 5010, 5021). Certainly if Congress were of the view that an eligible "Young Adult Offender" should not bear the scar of a criminal conviction would it not look with sympathy upon the intent of the N. Y. legislature in enacting section 701 of the Correction Law as it applied to a person of immature years?

C. The Immigration & Nationality Service Has No Discretionary Power to Deport

The government may argue that under section 701 subdivision (3) of the N. Y. Correction Law, notwithstanding the issuance of a certificate of relief from disabilities a judicial, administrative, licensing or other body, board or authority may rely upon the conviction as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege covered by the certificate.

It is submitted that this subdivision may not be the basis of deportation. Section 241 of the Immigration and Nationality Act enumerates specific legal grounds for deportation. The service does not possess any general "discretionary power" to deport. There must be clear and convincing evidence that a legal basis for deportation exists. Woodby v. INS, 385 U. S. 276 (1966); Ribeiro v. INS, 531 F. 2d 179 (3rd Cir. 1976). Even assuming ad arguendo the existence of "discretionary power" to deport, the record in this case which reveals the petitioner to be a well-educated young man of good character would not warrant the exercise of any such alleged "discretionary power."

As this Court said in Lennon v. INS, 527 F. 2d 187, 193:

> "It is settled doctrine that deportation statutes must be construed in favor of the alien.
>
> Since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

In light of the unequivocal purpose of both federal and state legislatures to relieve eligible first offenders of disabilities arising out of convictions of this kind, the severe construction given by the government to the New York proceedings should be disapproved.

CONCLUSION

For the foregoing reasons, petitioner asks that the decision of the Board of Immigration Appeals be vacated and reversed.

Respectfully Submitted,

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APPENDIX

APPENDIX

SYRACUSE UNIVERSITY

OFFICE OF STUDENT AFFAIRS
ACTIVITIES AND ORGANIZATIONS

STEELE HALL | SYRACUSE, NEW YORK 13210

February 27, 1974

TO WHOM IT MAY CONCERN: Re: Shaheen Rehman

This letter is written in support of Mr. Shaheen Rehman, a graduate student at Syracuse University. I have talked with Mr. Rehman regarding the problem with his experiences on his recent return to the United States. He seems to be a fine upstanding student who has not engaged in any nefarious activities. Indeed, he said he has never smoked maijuana and was not aware of the shape of the substance. I think it was a genuine error in judgment and in determining the substance of the material which was given to him by a friend in Pakistan. However, I am convinced that he had no intention of using the material personally or sharing it with anyone else. I trust that his error is one which can be foregiven and that a permanent record should not be established which may be held against him for purpose of deportation or denial of visa at a future date. I am confident that Mr. Shaheen Rehman is a good person to have around and we trust that you will do all within your power to make it possible for him to finish his work in graduate school and to be able to demonstrate the good qualities that we know he possesses.

Sincerely,

Charles V. Willie

Charles V. Willie
Vice President for Student Affairs

CVW/mv

EXHIBIT #4

SYRACUSE UNIVERSITY
THE MAXWELL SCHOOL OF CITIZENSHIP AND PUBLIC AFFAIRS
DEPARTMENT OF PUBLIC ADMINISTRATION
Programs in Public Management and Public Policy
200 MAXWELL HALL | SYRACUSE, NEW YORK 1321
TELEPHONE—315/423-2687/423-268

APPENDIX

March 5, 1975

Department of Justice
Immigration and Naturalization
U.S. Courthouse
Buffalo, New York 14202

Dear Sir/Madam:

I have known Shaheen Rehman for two years. As a student he performed very well in both my courses, Introduction to Public Administration/ Public Policy and Program Design. Outside the classroom I found him mature, intelligent, honest and trustworthy.

Mr. Rehman is a serious scholar in his field and aspires to do research and teach in the field of public administration. So that he can complete further study in his field I recommend that he be given the opportunity to stay in the United States for another two years. The time afforded him would be invaluable in enabling him to complete the education which is so important if he is to have a successful career.

I recommend him without reservation.

Sincerely yours,

James D. Carroll, Director
Public Administration Department

JC:gl

EXHIBIT #6

APPENDIX

SYRACUSE UNIVERSITY
INTERNATIONAL STUDENT OFFICE
230 EUCLID AVENUE | SYRACUSE, NEW YORK 1321
315/423-245

March 5, 1975

TO WHOM IT MAY CONCERN:

Mr. Shaheen Rehman, a Graduate Student at Syracuse University, is completing a Master's Degree and will continue for a Ph.d program in Public Administration. Mr. Rehman, who completed his Bachelor's Degree at State University of New York at Albany, came to us highly recommended by several professors from whom he had taken courses.

It is the goal of Mr. Rehman to work either with the United Nations or the Pakistani Government when he completes his advanced degrees and returns to his home country. He also would like to work with the State of New York in a practicum before leaving the United States.

Mr. Rehman, who is an excellent student, has been referred to us as scholarly and one professor rated him in the top 10% of students who have attended his classes in the last 26 years. He is industrious and conscientious. While at Albany he worked closely with the International Student Organization and the Foreign Student Adviser in programs promoting inter-relations between the American and foreign students.

At Syracuse University, Mr. Rehman was appointed a Resident Adviser in one of coveted positions sought by hundreds of American graduate students. This decision for appointment was based on character references which were reviewed by both Administration and student selection boards. He is performing well in this position working primarily with American undergraduates in resident programs. In addition to this, he carries a full load of graduate courses.

We have found Mr. Rehman to be one of the more mature graduate students on our campus. He works closely with the staff of the International Student Office which deals with approximatley 900 foreign students and their families who attend this University. Mr. Rehman has been helpful in programming orientation workshops and subsequent seminars and meetings sponsored by this department. Of high caliber, we find this student to be cooperative, personable, sensitive to others, and possesses a selfless dedication to contributing to the improvement of man's well being. A clean living modest man, Mr. Rehman does not smoke or drink alchoholic beverages.

Virginia T. Torelli

(Mrs.) Virginia T. Torelli
Foreign Student Adviser

VT/ms

EXHIBIT #5

STATE OF NEW YORK

CERTIFICATE OF RELIEF FROM DISABILITIES

FOR COURT OR BOARD OF PAROLE

Docket, File, or other Identifying No.

Q401269/74

This certificate is issued to the holder to grant relief from all or certain enumerated disabilities, forfeitures, or bars to his employment automatically imposed by law by reason of his conviction of the crime or of the offense specified herein.
This certificate shall NOT be deemed nor construed to be a pardon.
SEE REVERSE SIDE FOR EXPLANATION OF THE REGULATION GOVERNING THIS CERTIFICATE
The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, a one copy is to be filed with the N.Y.S. Identification and Intelligence System, Executive Park, Stuyvesant Plaza, Albany, N.Y.

1. For use by NYSIIS

HOLDER OF CERTIFICATE

2. Last Name: Rahman — First Name: Shaaen — Middle Initial:

3. NYSIIS Number (If not known, supply fingerprints to NYSIIS. If fingerprints are unobtainable, complete items 15-18 below.): 3666017L

4. Crime or offense for which convicted: 220.03(Poss. Dang. Drug)

5. Date of arrest: January 18,1974

6. Date of sentence: March 29,1974

7. Court of disposition (Court, Part, Term, Venue): New York City Criminal Court, Part EJ, Queens County

8. Certificate issued by:
- [x] a. COURT INDICATED IN NO. 7
- [ ] b. STATE BOARD OF PAROLE

9. Date this certificate is issued: March 29,1974

10. If this Certificate replaces Certificate of Relief From Disabilities previously issued, give date of previous Certificate.
Date: None [ ] Not Applicable

11. CHECK ONE BOX ONLY
This certificate shall:

- [x] a. Relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence. The Date of Sentence in this case must agree with the Date Certificate Issued.
- [ ] b. Relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.
- [ ] c. Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated _____

12. [ ] This certificate shall be considered permanent.

13. [x] This certificate shall be considered temporary until March 28,1975. After this date, unless revoked earlier by the issuing court or parole board, this certificate shall be considered permanent. A person who knowingly uses or attempts to use a revoked certificate in order to obtain or exercise any right or privilege that he would not be entitled to obtain or to exercise without valid certificate shall be guilty of a misdemeanor.

12. Signature of issuing official(s)	Print or type name(s)	14. Title(s)
Abraham Roth	Abraham M. Roth	Judge, Criminal Court

4a

Complete the following for N.Y.S.I.I.S., only if fingerprints are not obtainable

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A20 585 090 - Buffalo

NOV 17 1975

In re: SHAHEEN REHMAN

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Vincent A. O'Neil, Esquire
333 E. Onondada Street
Syracuse, New York 13202

ON BEHALF OF I&N SERVICE: Paul C. Vincent
Chief Trial Attorney

ORAL ARGUMENT: August 7, 1975

CHARGES:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251 (a)(11)) - Convicted of violation of law relating to the illicit possession of hashish

APPLICATION: Termination of proceedings

In a decision dated March 11, 1975, an immigration judge found the respondent deportable as charged and ordered his deportation. The respondent has appealed from that decision. The appeal will be dismissed.

The respondent, a native and citizen of Pakistan, entered the United States as a nonimmigrant student on January 17, 1974. On January 18, 1974 he was arrested for possession of hashish in violation of New York Penal Law 220.03 and, on March 29, 1974, his plea of guilty was accepted. Deportation proceedings were instituted

against him under section 241(a)(11) of the Immigration and Nationality Act, which provides for the deportation of any alien who has been convicted of a violation of any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marijuana.

The record contains a copy of a Certificate of Relief From Disabilities (hereinafter referred to as "Certificate") which was issued to the respondent pursuant to Section 701 of the New York State Correction Law on the day of the criminal proceedings. Section 701 of the Correction Law provides:

> "1. A Certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.
>
> 2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by

reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate.

3. A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege."

The issue on appeal involves the question of whether, in light of Section 701, the proceedings against the respondent resulted in a "conviction" upon which his deportation under section 241(a)(11) of the Act may be based.

In assessing whether a conviction has been had for immigration purposes, we have previously found the following factors, among others, to be significant: (1) a judicial finding of guilt, (2) action taken by the court which removes the case from those which are pending for consideration, and (3) evidence that the action of the court is considered a conviction by the State for at least some purpose. Matter of L-R-, 8 I&N Dec. 269 (BIA 1959).

From a review of the record of the criminal proceedings, the following facts are revealed: The respondent entered a plea of guilty which was accepted by the court. No appeal from the judgment of the court was taken. The respondent was sentenced to a conditional discharge for a period of one year. As a result of the judgment of the court, the respondent is barred from holding public office in New York State, and evidence of the conviction

may also be used as the basis for the exercise of discretion by state authorities. We conclude that the record of the criminal proceedings brought against the respondent clearly establishes that the respondent was convicted within the meaning of section 241(a)(11) of the Act.

New York, through the issuance of the Certificate to the respondent, has declared that it will not consider the conviction of the respondent to be a conviction with certain exceptions. 1/ New York, however, may grant relief only from disabilities which would otherwise result from its own laws. We are not bound by how the state chooses to treat the event. See Cruz-Martinez v. INS, 404 F.2d 1198 (9 Cir. 1968), cert. denied 394 U.S. 955 (1969). In cases involving narcotics violators not convicted under the Federal Youth Corrections Act or its state equivalent, we have limited our inquiry to whether a conviction existed. See Matter of Robinson, Interim Decision 2351 (BIA 1975); Matter of A-F-, 8 I&N Dec. 441 (A.G. 1959); Matter of Wong, 12 I&N Dec. 721 (BIA 1968). We have found such a conviction in this case.

We conclude that the deportability of the respondent has been established by clear, convincing and unequivocal evidence. The decision of the immigration judge is correct. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Chairman

1/ We note, however, that the Certificate given to the respondent could have been revoked by the State during the year of the respondent's conditional discharge.

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

~~Index No.~~ Docket No. 76-4022

SHAHEEN REHMAN

Petitioner
~~Plaintiff~~

against

IMMIGRATION AND NATURALIZATION SERVICE

~~Defendant~~
Respondent

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ONONDAGA *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
1044 Mill Street, Constantia, New York

That on July 17, *1976 deponent served the annexed* Brief for Petitioner

on United States Attorney
attorney(s) for Immigration & Naturalization Service
in this action at Foley Square Annex, New York, New York 10007
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in X *a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.*

Sworn to before me

July 17, 1976

Vincent A O'Neil

Notary Public

VINCENT A. O'NEIL
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-2963850
My Commission Expires March 30, ~~1976~~ 1977

Beverly J. Lee

The name signed must be printed beneath

Beverly J. Lee